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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.S., a Person Coming Under the
Juvenile Court Law.

B235257
(Los Angeles County
Super. Ct. No. CK78412)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of the County of Los Angeles,
Donna Levin, Juvenile Court Referee. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executive Director, and Anne E.
Fragasso, Staff Attorney, under appointment by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

M.S. (mother) appeals from the juvenile court's order terminating her parental rights to her child, A.S., under Welfare and Institutions Code section 366.26.¹ Mother contends that the juvenile court violated her due process rights when it denied her request for a contested hearing on the application of the parental visitation exception to the termination of parental rights under section 366.26, subd. (c)(1)(B)(i)). The juvenile court did not err.

FACTUAL AND PROCEDURAL BACKGROUND

On August 11, 2009, the Department filed a petition under section 300 alleging pursuant to subdivisions (a) and (b) that in July 2009, mother had physically abused two-year-old A.S., mother's child, by grabbing and pushing A.S., and remedial services failed to resolve the problem because mother failed to participate in the counseling services. Also pursuant to section 300, subdivision (b), the Department alleged that on numerous occasions mother left A.S. in the care of the maternal grandmother and other maternal relatives, and failed to make a plan for the A.S.'s care and supervision. Pursuant to section 300, subdivisions (b) and (g), the Department alleged that E.S., A.S.'s father, whose whereabouts were unknown, failed to provide for A.S.

Two additional counts were filed by the Department in a first amended petition under section 300, subdivisions (b) and (d) alleging that in or about September 2009, and on two more occasions, mother, then 15 years old, was sexually abused by father, M.S.'s maternal cousin, and the sexual abuse resulted in mother becoming pregnant and giving birth to A.S. It was alleged that the sexual abuse of mother endangered A.S. and placed A.S. at risk of physical harm, damage, and sexual abuse.

At the September 4, 2009, pre-trial resolution conference, mother plead no contest to the first amended petition, and the juvenile court dismissed the section 300,

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

subdivision (a) and (b) counts pertaining to mother's physical abuse of A.S., and sustained the subdivision (b) count pertaining to mother leaving A.S. in the care of the maternal grandmother and other maternal relatives, and failing to make a plan for the A.S.'s care and supervision. As to father, the juvenile court sustained the section 300, subdivisions (b) and (g) counts that father failed to provide for A.S., and the subdivision (d) count that father's sexual abuse of mother resulting in mother becoming pregnant and giving birth to A.S., endangered A.S. and placed A.S. at risk of physical harm, damage, and sexual abuse.

DISCUSSION

A. Standard of Review

There is no clear authority on the standard of review for the denial of a hearing based on an offer of proof in connection with the termination of parental rights. Because a hearing must be granted if the offer of proof sets forth a prima facie case, arguably the standard of review is de novo. Yet there are elements of discretion involved. Without deciding the appropriate standard of review, we hold there is no error under any standard of review.

B. Background Facts and Relevant Proceedings

On August 6, 2009, A.S., then two years old, was detained from mother and placed in foster care. At the August 11, 2009, detention hearing, the juvenile court ordered that A.S. be detained, and mother to have monitored visits with A.S. to occur a minimum of three times a week for three hours each visit, or one nine hour visit a week.

At the November 4, 2009, disposition hearing the juvenile court declared A.S. a dependant of the juvenile court pursuant to section 300, subdivisions (b), (d), and (g), ordered reunification services for mother. The juvenile court also ordered that mother was to have monitored visits with A.S., and the Department had the discretion to liberalize mother's visitation.

On May 5, 2010, the Department filed a status review report, stating that on April 13, 2010, A.S. was placed in a different foster home than she was originally placed upon being detained in August 2009. Mother had been visiting A.S. at least once a week for two to three hours. The visits were “appropriate;” mother interacted and played well with A.S.; and A.S. appeared well bonded to mother and seemed to enjoy mother’s visits. The Department offered mother additional monitored visits with A.S., but mother was not able to schedule more visits because of her work schedule. During the May 5, 2010, six month review hearing, mother’s counsel stated that mother completed the parenting classes, and the juvenile court ordered, over the Department’s objection, that mother was to have unmonitored visits with A.S.

On June 24, 2010, at a contested hearing, the juvenile court denied the Department’s section 388 petition requesting that the juvenile court change its order that mother have unmonitored visits. The petition had alleged that on May 16, 2010, during an unsupervised visit, mother dropped off A.S. in a truck, without a car seat, and with mother’s boyfriend, whom mother agreed not to allow to be around A.S. because the boyfriend’s background check had not yet been completed. The juvenile court continued to grant mother unmonitored day visits with A.S., but ordered that only people approved by the Department could be present during the visit, and if A.S. was to be transported by car, there must be an approved car seat in the back of the car for A.S.

On July 26, 2010, the Department filed a second section 388 petition requesting that the juvenile court change its order that mother have unmonitored visits. The petition had alleged that on July 3 and 4, 2010, mother returned A.S. from unmonitored visits in a car driven by and unlicensed driver who did not have automobile insurance. Mother claimed that it had been difficult to obtain transportation for the visits because mother did not have a bus pass. It was alleged that the Department made several attempts to meet with mother to provide her with a bus pass but mother did not confirm or schedule an appointment. On July 12, 2010, the Department provided mother with a bus pass. At the August 3, 2010, hearing on the second section 388 petition, the juvenile court scheduled a contested hearing, and in the interim ordered that mother have monitored visits with A.S.,

mother was not permitted to have anyone else attend, and if A.S. was to be driven in a vehicle it must be equipped with a child seat and the driver must have automobile insurance.

On October 14, 2010, the Department filed an addendum report stating that the Department provided mother with three hours of visits with A.S. each Monday. On June 17, 2010, mother's visit was cancelled because she was 45 minutes late. On June 21, 2010, and July 16, 2010, there were no visits because mother did not confirm them. The Department stated that mother had poor parenting skills, and most of the time during mother's monitored visits were spent on the Department's training mother on them. When mother visited A.S., they played for about 5-10 minutes, and thereafter mother usually sat on the sofa and watched A.S. play. The Department had several discussions with mother on how to play and read to A.S., but mother failed to follow through with the Department's directions. Mother instead preferred to do nothing or take a nap with A.S. The Department reported that A.S. "continually rejects [mother's] affection, refuses to sit on [mother's] lap, and has tried to leave the visits asking for the foster mother or the . . . Social Worker. The Department's social worker stated, "I believe the deterioration of this relation is due to several factors. First [A.S.] is in a home where she receives consistent love, nurturing, limits, and encouragement. [A.S.] has responded positively to this environment and has a deep attachment to the family and obviously feels very safe and secure in this home. As a result when she is now with [mother] her equilibrium is disturbed and this is upsetting to her. In addition, . . . [mother] has not been able to provide the security as well as the emotional necessities [A.S.] obviously needed as a baby and toddler. As [A.S.] has grown accustomed to positive environment, [A.S.] is making the choice of where she prefers to be.'"

The Department addendum report stated that on September 13, 2010, mother's visit with A.S. went well. A.S. hugged and kissed mother, and mother bought food for A.S. On September 17, 2010, the Department arranged for mother to have six hours of monitored visits with A.S. on Mondays. On September 20, 2010, during mother's visit with A.S., A.S. was anxious and upset because mother did not interact with her and she

and mother were in one room for six hours. During a three hour monitored visit between mother and A.S., mother did not engage A.S., and there was minimal interaction between mother and A.S. Mother and A.S. rejected each other when one attempted to get close to the other. A.S. dominated mother, and mother gave in to A.S.'s demands. On September 27, 2010, the Department arranged for mother to have visitation with A.S. at a local park.

According to the Department's October 14, 2010, addendum report, A.S. underwent an annual physical examination and "was found to be at a healthy height/weight range, and is a "Well Child" and there are no abnormal findings." A.S. was not a client of Regional Center and did not appear to be in need of an evaluation. On September 20, 2010, A.S. was enrolled in the Head Start program, and classes were scheduled for three and one-half hours, Mondays through Fridays.

At the October 14, 2010, adjudication hearing on the Department's second section 388 petition, which involved mother and A.S. being in a car driven by an unlicensed uninsured driver, the juvenile court granted the petition, ordered monitored visits for mother, and granted the Department discretion to liberalize the visits. The juvenile court stated, "The mother had a chance. I denied the first 388 petition and the mother despite what the court ordered went and did the same thing all over again." The juvenile court advised mother, "You were very close to getting your child back in your home, and you refused to follow anyone's orders. This is about the safety of your child. That all it is about." The juvenile court also stated that a six hour visit in an office was a "bad idea," and if mother could find an appropriate monitor, the visits did not have to be in an office; they could be at a park, restaurant, or wherever mother could arrange to go.

On November 3, 2010, the Department filed a status review report, stating that the Department made several attempts to ensure that mother's monitored visits are planned and carried out to best meet mother's work and alleged school schedule. Mother received six hours of weekly monitored visits on Mondays. As of September 27, 2010, three hours of mother's monitored visits with A.S. were taking place outside the office, with each week alternating between a park and McDonald's restaurant. The other three hours of mother's monitored visits occurred at a mall.

The November 3, 2010, status review report provided that A.S. was potty trained, able to remove and put on clothes without assistance, and able to communicate with her caretakers. A.S.'s foster parents, with whom she lived since April 13, 2010, provided consistent care for A.S. and assured that her needs are met. A.S. had adapted well in the foster family home, and A.S. appeared to be attached to her foster parents. A.S. showed the Department her bedroom and stated, "This is where the Princess sleeps. You know, I'm a beautiful princess. My "papi jai jai" and "mami tif" [A.S.'s foster parents] tells me so.'" The foster parents expressed an interest in adopting A.S.

According to the Department's February 3, 2011, status review report, a social worker who monitors mother's visits with A.S., stated, "There continues to be a disruption in the attachment between [A.S.] and [mother]. [A.S.] is a very sweet and kind little girl comfortable in her current environment . . . [A.S.'s foster family] prepare [A.S.] for her visit with [mother] and [A.S.'s foster family] get excited about it, attempting to serve [as] a positive role model. . . [A.S.'s] visits [with mother] become increasingly difficult for [A.S.]. [A.S.] did not want to separate from her foster parents. She would cry, slam the door on [mother] and ask for her 'Mommy & daddy' meaning [A.S.'s foster parents]. During the visit [A.S.] would sit on the sofa across from [mother] and cover her face. [A.S.] would kick and hit [mother] if [mother] came close, saying "No!" and crying. When visits were changed to the . . . Mall this provided a distraction for [A.S.] There were other children, a play area and the focus was not on visiting with [mother], but rather going to a fun play area. She still did not always like separating and she asked for "Mommy & Daddy." . . [¶] [A.S.] will play with [mother] for about 40 minutes and then become bored. She states she is hungry, thirsty, wants to leave. She would often come visit by the [social worker monitoring the visits]. [Mother] was never able to take the lead in terms of determining when [A.S.] needed a drink, had to use the restroom or needed lunch. . . [¶] When [A.S.] needed to use the restroom or had a question, she never sought out [mother], always the [social worker] . . . While [mother] did attend her visits once a week she called [A.S.] only twice during this three month period [and] it is important to note [mother] does not call on holidays. . . [¶] [A.S.]

enjoyed the distraction of the mall. She would play with [mother], but in short intervals. [A.S.] became bored easily. [The social worker] suggested walks to Santa and the bookstore. [A.S.] really enjoyed the bookstore, but became frustrated when [mother] would not want to read books to her. [A.S.] would bring the books to [the social worker] to read. [The social worker] would encourage [A.S.] to ask [mother] to read them. Intervention between [A.S.] and [mother] was more like two playmates than mother/daughter. [Mother] had difficulty identifying and fulfilling [A.S.'s] needs, thus [A.S.] did not seek [mother] out to get [A.S.'s] needs met. [A.S.] would always come to [the social worker].”

The Department’s February 3, 2011, status review report, stated that A.S. is adjusting well to her educational routine, and enjoyed participating in the Head Start program. A.S. was assimilating to the rules of her foster home by picking up her toys and clothes, and learning not to interrupt when others were speaking.

On April 1, 2011, A.S.’s foster parents filed a de facto parent statement, stating in a sworn statement, “[A.S.] is in great health & eats salads & vegetables. She is extremely courteous, obidient, [*sic*] & respectful. As a young student she is advancing well above [the] normal rate. She refers to us as her ‘Mommy & Daddy.’” The de facto parent statement attached several letters stating that A.S.’s demeanor, emotional condition, and overall well-being was extremely good, and had substantially improved since being in the care of her foster parents.

At the April 4, 2011, contested section 366.22 hearing, the juvenile court terminated mother’s reunification services, and ordered mother to have monitored visits at a minimum of one time a month and one hour for each visit. The juvenile court scheduled a section 366.26 selection and implementation hearing for August 1, 2011.

On August 1, 2011, the Department filed a 366.26 “WIC report” [Welfare and Institutions Code Report] stating that during a one hour visit between A.S. and mother on June 10, 2011, A.S. cried and lay on the floor. Mother attempted to comfort A.S., but A.S. did not respond to mother’s attention and instead tried to “scoot” herself away from mother. The report stated, “Case records describe that the mother and child seem to have

a strained and unhealthy relationship. The mother seems to be going through the ‘motions’ and in most cases, [A.S.] has not consistently responded appropriately to [mother’s] attention. As reported, some of the visits were reported to go well, whereas others were difficult and traumatizing for the child. The mother was reported to show no emotion toward her mother [sic] and [mother] was not able to sense how important it was to cue into her child’s needs and requests.” A.S.’s foster parents “are open to future contact with [mother] as long as it is in the best interests of [A.S.]”

According to the Department’s August 1, 2011, 366.26 WIC report, A.S. was seen for a physical examination on June 23, 2010, and no medical concerns were noted. A.S. was also seen for a dental examination on June 30, 2010, and no dental concerns were noted. A.S. began the Head Start program in January 2011, adapted easily to the structure of preschool, and enjoyed her new friends and the environment of her school. A.S. was “developmentally on target,” friendly, talkative, and able to run and jump. A.S. was a “spontaneous, friendly and [an] engaging child and [who] shows confidence when visited by” the social worker.

The 366.26 WIC report stated that A.S. remained in the home of her foster parents. The foster parents considered A.S. as part of their family, and had reaffirmed their desire to adopt A.S. Their home study had been approved. The foster mother had one arrest in 2003, but the case was dismissed. The foster father had two arrests in 2004 and 2006, respectively; these incidents were explored and discussed by the adoption worker prior to the approval of the foster parent’s home study. The relationship between A.S. and the foster parents was natural and loving, and a strong emotional attachment had been observed between A.S. and the foster parents. A.S. naturally sought comfort and guidance from them. The report stated, “Case records state that [A.S.] has been observed to have an ‘extremely strong attachment and bond to [the foster parents] and [A.S.] refers to them as mommy and daddy.’” The report also stated, “The [foster parents] are meeting the needs of [A.S.] and they are committed to providing a permanent home for her through the plan of adoption. [A.S.] is adoptable.”

At the August 1, 2011, section 366.26 hearing, mother's counsel requested a contested hearing. The juvenile court requested that mother's counsel provide an offer of proof, and mother's counsel responded, "She claims that she has a relationship with the child and that it would be detrimental to the child to terminate that relationship." Mother's counsel advised that the juvenile court's latest order provided that mother was to have visits with A.S. once a month, and mother's last visit occurred the prior month, and it was monitored. The juvenile court stated, "Based on mother's offer of proof . . . , I don't see how it is possible for her to meet the burden in both imposed by 366.26. I will deny the request for a contested .26 hearing."

Also at the section 366.26 hearing, after the juvenile court denied mother's request for a contented section 366.26 hearing, mother's counsel stated, "The mother would object to going forward at this time. I would also note that the issue of adoptability is involved, and she would raise that as an issue as well." The juvenile court stated, "Well, as to the issue of adoptability, this child has been in the home of the prospective adoptive parents for over a year. They have filed for de facto status based on their intention to adopt this child. . . . [¶] There's an approved home study, and I will find and I have found previously that this child is adoptable. There are parents ready, willing, and able to adopt [her]. . . . [¶] The court finds—the court has read and considered and admits into evidence the social worker's report dated today's date August 1st, 2011, and all prior reports. . . . The court finds by clear and convincing evidence that the child is adoptable."

C. Relevant Legal Principles

1. Offer of Proof

"[A] parent has a right to 'due process' at the hearing under section 366.26 which results in the actual termination of parental rights. This requires, in particular circumstances, a 'meaningful opportunity to cross-examine and controvert the contents of the report.' (*In re Malinda S.* (1990) 51 Cal.3d 368, 379 [272 Cal.Rptr. 787, 795 P.2d

1244]; see *In re Crystal J.* (1993) 12 Cal.App.4th 407, 412-413 [15 Cal.Rptr.2d 613].) But due process is not synonymous with full-fledged cross-examination rights. (*In re Sade C.* (1996) 13 Cal.4th 952, 992 [55 Cal.Rptr.2d 771, 920 P.2d 716].) Due process is a flexible concept which depends upon the circumstances and a balancing of various factors. (*Id.* at pp. 986-991.) The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court. (*People v. Marshall* (1996) 13 Cal.4th 799, 836 [55 Cal.Rptr.2d 347, 919 P.2d 1280]; *Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1147 [78 Cal.Rptr.2d 488].)” (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816-817.)

“Because due process is, as we noted in *In re Jeanette V.*, *supra*, 68 Cal.App.4th 811, a flexible concept dependent on the circumstances, the court can require an offer of proof to insure that before limited judicial and attorney resources are committed to a hearing on the issue, mother had evidence of significant probative value. If due process does not permit a parent to introduce irrelevant evidence, due process does not require a court to hold a contested hearing if it is not convinced the parent will present relevant evidence on the issue he or she seeks to contest. The trial court can therefore exercise its power to request an offer of proof to clearly identify the contested issue(s) so it can determine whether a parent’s representation is sufficient to warrant a hearing involving presentation of evidence and confrontation and cross-examination of witnesses.” (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1122.)

A juvenile court does not violate a parent’s right to due process by requiring the parent to make an offer of proof before the juvenile court holds a contested hearing on the applicability of the parental visitation exception to the termination of parental rights under section 366.26(c)(1)(B)(i). (*In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1116.) “A proper offer of proof gives the trial court an opportunity to determine if, in fact, there really is a contested issue of fact. The offer of proof must be specific, setting forth the actual evidence to be produced, not merely the facts or issues to be addressed and argued.” (*Id.* at p. 1124.)

2. *The Parental Visitation Exception*

“At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. (*In re Taya C.* (1991) 2 Cal.App.4th 1, 7 [2 Cal.Rptr.2d 810].) If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans. [Citations.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 296-297.)

““Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.’ [Citation.] ‘A section 366.26 hearing . . . is a hearing specifically designed to select and implement a permanent plan for the child.’ [Citation.] It is designed to protect children’s ‘compelling rights . . . to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ [Citation.] ‘The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful.’ [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53.)

When a juvenile court finds that a child is likely to be adopted after removing the child from parental custody and has terminated reunification services, parental rights may be terminated unless the court finds a compelling reason for determining that doing so would be detrimental to the child under certain exceptions set forth in section 366.26, subsection (c)(1). (*In re Celine R., supra*, 31 Cal.4th at pp. 52-54.) “The statutory exceptions merely permit the court, *in exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*Id.* at p. 53; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350 [“Because a section 366.26 hearing occurs only after the court has repeatedly found parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement”].)

The parental visitation exception in section 366.26(c)(1)(B)(i) (formerly section 366.26, subdivision (c)(1)(A)²) provides that parental rights will not be terminated and a child freed for adoption if parent has “maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449-450.) Application of the parental visitation exception requires a two-prong analysis. The first is whether there has been regular visitation and contact between parent and child. (*Id.* at p. 450.) The second is whether there is a sufficiently strong bond between parent and child that the child would suffer detriment from its termination. (*Ibid.*) The parent/child relationship must promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The visitation exception does not apply when a parent fails to occupy a parental role in his child’s life. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51 [parents who have essentially never had custody of children or advanced beyond supervised visitation will have a difficult time establishing the parental visitation exception].)

Parents bear the burden of establishing that the visitation exception to termination of parental rights applies. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) A relationship sufficient to support the visitation exception “aris[es] from day-to-day

² Section 366.26, subdivision (c)(1)(A) was renumbered 366.26(c)(1)(B)(i) effective January 1, 2008. (Stats.2006, ch. 838, § 52.)

interaction, companionship and shared experiences.” (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) “[T]o establish the exception in section 366.26, subdivision (c)(1)(A), the parents must do more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.]” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) A parent must show that he has maintained regular visitation and contact with the child and that a benefit to the child from continuing the relationship would result. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 207; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826-827.) “The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent. [Citations.]” (*In re Mary G.*, *supra*, 151 Cal.App.4th at p. 207; see *In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81; *In re Beatrice M.*, *supra*, 29 Cal.App.4th at pp. 1416-1418.) That is, the parent is required to establish that “the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Whether the exception applies is determined “on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs are some of the variables which logically affect a parent/child bond.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

D. Application of Relevant Legal Principles

Mother contends that her offer of proof was sufficient to require a contested hearing on the parental visitation exception. We disagree.

Mother’s offer of proof that she “has a relationship with the child and that it would be detrimental to the child to terminate that relationship” was not specific about the nature of mother’s claimed relationship with A.S. because it failed to address the strength of mother’s relationship with A.S. or explain how the termination of that relationship

would be detrimental to A.S. (*In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 450; *In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1124.) Moreover, mother's offer of proof failed to establish a basis for a contested hearing because it failed to identify evidence of a relationship between mother and A.S., the termination of which would greatly harm A.S. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229; *In re Tamika T.*, *supra*, 97 Cal.App.4th at p. 1124.) The juvenile court did not err.

Even if the juvenile court erred in denying mother's request to set the matter for a contested hearing, it was harmless error beyond a reasonable doubt. (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1387.) At the time mother's parental rights were terminated, A.S. was four years old, and she had not been living with mother since she two years old. And, A.S. had been living with her current caretakers and prospective adoptive parents for 18 months when mother's parental rights were terminated.

With the exception of approximately three months, mother's visits with A.S. were monitored. One of mother's visits in June 2010 was canceled because she was 45 minutes late, and on two occasions in June and July 2010, there were no visits because mother failed to confirm them. Although mother's initial visits with A.S. went well, the Department reported that they deteriorated over time. There is evidence in the record that the Department often spent most of the time of mother's visits with A.S. on training mother about parenting skills. The Department also reported that when mother visited A.S., they would play for about 5-10 minutes, and thereafter mother usually sat on the sofa and watched A.S. play. There was evidence that mother preferred to do nothing, or take a nap with A.S., instead of playing with or reading to A.S. The Department also reported that A.S. continually rejected mother's affection, refused to sit on mother's lap, and tried to leave the visits asking for the foster mother or the Social Worker. There was also evidence that in September 2010, A.S. was anxious and upset because mother did not interact with A.S., and mother and A.S. rejected each other when one attempted to get close to the other.

The Department's February 3, 2011, status review report stated that a social worker who monitored mother's visits with A.S. reported that there "continues to be a disruption in the attachment between [A.S.] and [mother]. . . . [A.S.'s] visits [with mother] become increasingly difficult for [A.S.]. [A.S.] did not want to separate from her foster parents. She would cry, slam the door on [mother] and ask for 'Mommy & daddy' meaning [A.S.'s foster parents]. During the visit [A.S.] would sit on the sofa across from [mother] and cover her face. [A.S.] would kick and hit [mother] if [mother] came close, saying "No!" and crying. . . . [¶] [A.S.] will play with [mother] for about 40 minutes and then become bored. She states she is hungry, thirsty, wants to leave. . . . [Mother] was never able to take the lead in terms of determining when [A.S.] needed a drink, had to use the restroom or needed lunch. . . . [¶] When [A.S.] needed to sue the restroom or had a question, she never sought out [mother], always the [social worker]. . . . While [mother] did attend her visits once a week she called [A.S.] only twice during this three month period [and] it is important to note [mother] does not call on holidays. . . . [¶] [A.S.] enjoyed the distraction of the mall. She would play with [mother], but in short intervals. [A.S.] became bored easily. . . . [A.S.] really enjoyed the bookstore, but became frustrated when [mother] would not want to read books to her. [A.S.] would bring the books to [the social worker] to read.'"

Mother contends, "Even the foster parents who wished to adopt [A.S.] acknowledged that it was in [A.S.'s] best interest not to terminate her relationship with mother." The record, however, does not support mother's contention. The Department reported that the foster parents stated they "are open to future contact with [mother] as long as it is in the best interests of [A.S.]"

To the extent mother contends that the juvenile court erred in requiring mother to make an offer of proof on the issue of adoptability, mother mischaracterizes the record. The juvenile court did not require that mother make an offer of proof on the issue.

Also, to the extent mother contends that the juvenile court erred in denying her a contested hearing on the issue of adoptability because the Department bore the burden of proof, mother failed to establish reversible error. (*Andrea L. v. Superior Court, supra*, 64

Cal.App.4th at p. 1387.) The question of adoptability focuses on whether the child's age, physical condition and emotional state make it difficult to find a person willing to adopt that child. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) A "child's young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability." (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562.) A.S. is only four years old, is in good physical and emotional health, and is developmentally on target. In addition, A.S.'s foster parents have stated that they are interested in adopting A.S. "[T]he fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family." (*In re Sarah M., supra*, 22 Cal.App.4th at pp. 1649-1650, italics deleted.)

As stated in one case, "On this record, we confidently conclude, beyond a reasonable doubt, no different result would have obtained had mother's request for a contested hearing been granted. Accordingly, even under the most stringent test of prejudice applicable to a denial of due process, remand for a contested hearing would constitute an idle act and the juvenile court's error must be seen as harmless beyond a reasonable doubt. [Citations.]" (*Andrea L. v. Superior Court, supra*, 64 Cal.App.4th at p. 1387.)

DISPOSITION

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.